In the
Supreme Court of the United States

October Term 1970

No. 556

FILIPPO SACCO, also known as JOHN ROSSELLI,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING

MORRIS LAVINE,
215 West Seventh Street
Los Angeles, California 90014
MAdison 7-3241
Attorney for Petitioner.

WESTERN PRINTING COMPANY, WHITTIER—OXBOW 9-1723

In the
Supreme Court of the United States

October Term, 1970

No. 556

FILIPPO SACCO, also known as JOHN ROSSELLI,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

Comes now Filippo Sacco, also known as John Rosselli, and petitions for rehearing from the order of November 10, 1970 denying the petition for certiorari in the above entitled case.

The petition for rehearing is filed on the following grounds, to-wit:

1. The trial court at Los Angeles, and in the State of California and Central District, was without jurisdiction to try and hear the issue of the validity of the marriage of petitioner's mother and his naturalized stepfather. The validity of the marriage, if it could be tested at all after the death of his stepfather and his unavailability for trial, could only be in the State of Massachusetts where the marriage took place.

2. The validity of the marriage could not be tested colaterally in Los Angeles as there is a presumption that the marriage, duly performed in the State of Massachusetts prior to September 22, 1922, was valid and existing at all times subsequent thereto and that the son was a derivative citizen. Such presumption must be given full faith and credit under the Constitution and laws of the United States in a trial in California and cannot be invalidated by a collateral attack in California.

3. A document in a foreign country purporting to be a death certificate, and without any evidence as to how it was prepared or by whom and what the sources of the information contained therein were, cannot and does not overcome the regularity of a marriage performed in the United States and the presumption that the persons entering that marriage were free of crime or any violation of the law and that the child of one of the parties to the marriage derived derivative citizenship.

The issues are of great importance and have not been passed upon in any case heretofore before this Court.

This Court has never hesitated to re-examine its determinations when important phases of the case have been loverlooked.

This case is one of first impression and the only case we can find where a citizen has in effect been denaturalized and made an alien by a trial involving

his derivative citizenship from a marriage by his naturalized stepfather with his mother and where the trial is in another state from the place where the marriage took place.

Also, without an order and decision of the court of the state where the marriage took place.

Also, with a proceeding set up by Congress and the Immigration Department to attack citizenship. (Sec. 1451 (e), Title 8, U.S. Codes; Regulation 3851, Immigration Regulations)

The facts are simple and undisputed. Petitioner was the son of Maria De Pasquale Sacco Cianciulli.

His mother came to America with his father from Esperia, Italy, where he was born on July 4, 1905. His father, Vincenzo Sacco, died October 13, 1918 in Sommerville, Massachusetts. (R.T. 208-209) Maria, his mother, was a widow.

On February 8, 1922, and under the naturalization laws as they then existed, Maria married Liberato Cianciulli in Boston, Massachusetts. Cianciulli had been naturalized as an American citizen in Boston on September 20, 1909. (R.T. 212) Mrs. Cianciulli now became an American citizen by operation of law, as it then existed. (Act of February 10, 1855, 10 Stats. 604. Sec. 1994) Nothing was required under the Act to make the petitioner a derivative citizen. As such, he remained a derivative American citizen unless or until it could be taken away from him in the only way in

which Congress has authorized the taking away of American citizenship, to-wit, under the Naturalization Act of 1940, Title 8, Sec. 1451(a), U.S. Codes. This requires 60 days notice and a hearing, none of which was done.

Furthermore, the Act made no provision for the revocation of a derivative citizenship and Title 8, Sec. 1451(c) is retroactive, in effect quieting title to those who already have citizenship, by operation of law or otherwise. (*U.S. v. Keller*, 13 F. 82 (CCA III, 1882)

Therefore, neither Congress nor the Attorney General had any jurisdiction over him.

At no time was there ever any attempt to attack the validity of the marriage of Cianciulli and Mrs. Sacco in the state in which they were married during the lifetime of Cianciulli. No proceedings were taken anywhere until the petitioner was charged with being an alien who failed to register as an alien in these proceedings.

Petitioner produced uncontradicted evidence of the marriage of his mother to his naturalized stepfather, and although the government at this point conceded the marriage having taken place, the proof being positive beyond a reasonable doubt, they nevertheless sought to prove the marriage of the mother to the naturalized stepfather was invalid because of a claimed former wife of the stepfather.

To accomplish this attack, respondent sent an agent

to Italy to secure a death certificate of the alleged former wife of Mr. Cianciulli. There was objection to its use and its introduction on the ground that it was hearsay and no foundation was laid as to how the information on the document was secured and this document was offered to overcome the presumption of regularity of the American marriage in Boston of Mrs. Sacco to Cianciulli and the presumption that neither party was committing any crime and that there was no proof or any data as to any intervening years when the woman named in the death certificate had not been heard from by her son for a period of ten years or more.

In the *Estate of Shega,* 156 N.W. 2d 392, the court there held that conclusions in a foreign official document are not admissible. (20 Wisc. 2d 592)

In *In re Johnson's Estate,* 16 NYS 2d 855, 172 Misc. 1075, in proceedings for distribution of a portion of decedent's estate a certificate of a Swedish rector, who kept official vital statistics in Sweden, certifying in conformity with ministerial records and "with other documents," the nature of which was not revealed, regarding off-spring of marriage of deceased's alleged parents together with the date of their respective births and marriages, their off-spring and dates of their immigration to North America and the like, was inadmissible, since it was a "copy of a public foreign record" and was not "evidence" within the statute providing proof of foreign records. Civil Practice Act, §§329, 398.

In *In re Asterio's Estate*, 16 NYS 2d 943, 172 Misc. 1081, in proceedings by Public Administrator to pay distributable estate into a City Treasury for account of unknown distributees, alleged certificates executed in foreign country to effect that certain foreign subject was a brother of deceased were inadmissible where such certificates were not copies of records and merely certified officer's version of what the original record seemed to indicate. Civil Practice Act §§329, 398.

In *Russo v. Metropolitan Life Ins. Co.*, 3 Atl. 2d 844, an instrument reciting that official of Italian civil state "hereby certifies" that (named person) was born on (certain date), was not admissible in evidence as certified copy of record of such person's birth.

There were objections made that the information contained in the document herein which had been produced by the FBI agent consisted merely of conclusions and there was no showing who wrote the information contained in it. There is no presumption of the validity of the information contained in a foreign document and such document did not and could not overcome the presumption of the regularity and the marriage certificate acknowledged by the government in this case.

Congress has not authorized nor does the Constitution permit the taking away of a derivative citizenship any more than any other citizenship and only in the way provided by statute, if possible at all. See:

Title 8, Sec. 738(d), U.S. Codes; Title 8, Sec. 1451(e), U.S. Codes; Title 8; Sec. 906, U.S. Codes; and Title 8, Sec. 1101, note 1952, U.S. Codes.

There has never been a trial or confrontation of the petitioner of any live or percipient witnesses attacking the validity of the marriage of his mother to his stepfather and this is a deprivation of petitioner's Sixth Amendment rights.

The case is one of great importance in the administration of the naturalization laws of the United States and the protection of citizenship, whether original or derivative, and a hearing should be granted to determine these issues. (See: *Trop v. Dulles,* 356 US 86, 2 L.ed. 2d 650; U.S. Immigration Code, Title 8, and Rules and Regulations pursuant thereto; *U.S. v. Zucca,* 351 US 91, 100 L.ed. 964; *Costello v. U.S.,* 356 U.S., 256, 2 L.ed. 2d 711; 8 U.S.C.A. 1451(e); *Costello v. U.S.,* 365 US 265, 5 L.ed. 2d 571)

WHEREFORE, we respectfully pray that this Honorable Court grant a rehearing to determine the important issue of constitutional and statutory law in relation to immigration matters involved in this unusual case.

Respectfully submitted,

MORRIS LAVINE
Attorney for Petitioner

CERTIFICATE OF COUNSEL

This petition is filed in good faith and not for the purpose of delay and the matter is one of first impression and importance and it is restricted to the grounds specified above.

MORRIS LAVINE